



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3000 MARINE CORPS PENTAGON
WASHINGTON, DC 20350-3000

5720
ARSF-F
September 25, 2013

SENT VIA EMAIL TO: 445-65912304@REQUESTS.MUCKROCK.COM

MR JASON SMATHERS
MUCKROCK NEWS
DEPT MR 445
PO BOX 55819
BOSTON MA 02205-5819

Dear Mr. Smathers:

**SUBJECT: YOUR FREEDOM OF INFORMATION ACT (FOIA) REQUEST, FILE
NUMBER USMC-HQ 2011F030250**

This responds to your February 28, 2011, FOIA request seeking the Trademark Licensing Office (TMLO) records concerning a request from a company wishing to manufacture a Marine Corps energy drink as well as a company pitching a line of USMC themed condoms. Your request was controlled under file number **USMC-HQ 2011F030250**.

You specifically mentioned the TMLO so we contacted them on your behalf. They indicated that they have no records responsive to your request in reference to the Marine Corps branded condoms. However, they were able to identify 47 pages as responsive to the energy drink portion of your request. Upon review, we have determined that the documents are releasable and have enclosed a copy with this letter.

You will see that some information has been redacted. Specifically, third-party names and signatures have been withheld pursuant to FOIA exemptions (b)(6), which prohibit disclosure of personal information when an individual's privacy interest in it outweighs any public interest. In addition, portions of the document that contain "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential" have been withheld pursuant to FOIA exemption (b)(4).

Because some information has been withheld, you may consider this to be an adverse determination that may be appealed to the Department of the Navy, Office of the General Counsel, Attn: FOIA Appeals, Room 5A532, 1000 Navy Pentagon, Washington, DC 20350-1000. Your appeal, if any, must be postmarked within 60 calendar days from the date of this letter and should include a copy of your initial request, a copy of this letter, and a statement indicating why you believe your appeal should be granted. We recommend that your appeal and its envelope both bear the notation "Freedom of Information Act Appeal."

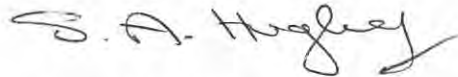
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We have categorized you as an "other requester" for the purpose of assessing FOIA processing fees. As such, you are entitled to two hours of search time and 100 pages of duplication free of charge but are responsible for the payment of any fees beyond that. In this instance, the applicable fees did not exceed your free entitlement so there is no charge for processing this request.

Questions concerning this action should be directed to Ms. Barbara Gonzalez of my staff at (571) 256-8636 or (703) 614-4008, or via email to smb.hqmc.foia@usmc.mil or fax at (703) 614-6287. Please reference the file number in the subject line above.

Finally, please note that I am the official responsible for this determination. Should you have questions or concerns, you may contact me at (703) 614-4008.

Sincerely,

A handwritten signature in black ink, appearing to read "S. A. Hughes", with a stylized flourish at the end.

S. A. HUGHES
Head, FOIA/PA Section

Enclosure

ENCLOSURE



UNITED STATES MARINE CORPS

LICENSE APPLICATION

(Please Print or Type)

Thank you for your interest in United States Marine Corps (USMC) trademark licensing. This form allows us to get to know your company better, so please answer the questions as completely as possible.

STEP ONE: APPLYING FOR A LICENSE

To begin the licensing process, you must complete the following steps:

- Complete the application in full, providing USMC with a comprehensive look at your company and its involvement and experience within the licensing industry.
- Provide a representative sample of each product that you plan to produce and or sell bearing any USMC insignia. Catalogs and/or e-mail photos of products are acceptable during the pre-production phase. The samples must illustrate your planned method of enhancement. Samples bearing marks other than those of the USMC may be submitted; however, the USMC reserves the right to request a production-run sample of the licensed product prior to executing the Standard License Agreement.
- Once you have completed the application, send it with the other required elements to the United States Marine Corps Public Affairs, Trademark Licensing Office at the address at the end of this application, and keep a copy of the application packet for your records. The Trademark Office will review each application based on the information provided and if your application is approved, you will receive a licensing packet. If your application is not approved, you will be notified in writing.

****Applications submitted without all of the above-mentioned items will not be processed****

STEP TWO: THE LICENSING PROCESS

Once your application has been approved for license, you will receive a licensing packet. You must complete the following steps in their entirety and receive a fully executed agreement before you may begin production:

- Sign and return the Standard License Agreement
- Submit a certificate of product liability insurance that names the USMC as additional insureds.

- Submit the company's identification tag or label that will appear on all products. USMC requires all licensees to properly identify themselves on each product with either a neck label, hang tag or byline.

- All artwork must be approved by the Marine Corps Public Affairs, Trademark Licensing Office prior to production.

****Authorization to produce products bearing USMC marks will not be granted until the company has completed the licensing process in its entirety and received an executed standard license agreement.**

- Apparel Licensees are required to use a USMC Trademark Licensing approved hologram hangtag or affix the 1" Marine Corps hologram sticker to an approved custom hangtag on all merchandise.

- Headwear and Non-Apparel Licensees are required to use the USMC Trademark Licensing hologram stickers (1" x 1"). Those Non-Apparel Licensees with very small products may be permitted to use the smaller (1cm x 1cm) hologram stickers with special written approval from the Marine Corps.

Ordering Labels

- The Marine Corps will provide its Licensees the contact information for the only authorized supplier of USMC Trademark Licensing labels and hangtags upon completion of your final License Agreement.

- Please note that USMC Trademark Licensing labels will not be shipped from the manufacturer until/unless you have an agreement in place with the Marine Corps Trademark Licensing Office.

STEP THREE: LICENSE MAINTENANCE

Once the licensing process has been completed, the Trademark Licensing Office will forward an executed copy of the Standard License Agreement to your company along with a unique user name and password that will help you gain access to production-ready artwork located on the Marine Corps website. To keep your license in good standing, you must remember to:

- Maintain product liability insurance coverage for each license that you hold, and make sure that a copy of your current certificate of insurance is on file with USMC.

- Always secure written approval of artwork from the Trademark Licensing Office prior to production.

Once again, **this is not a contract**. You are **not authorized** to use USMC marks until: 1) you receive a fully executed Trademark License Agreement, 2) your products and graphics have been approved, and 3) you have provided our office with evidence of product liability insurance.

COMPANY INFORMATION

Company Name: JOHNNY & MIKE DRINK LLC

Other names used by business (subsidiaries, brands, DBAs, etc.):
PATRIOT BEVERAGE COMPANY

World Wide Web Address: www.reupdrink.com

Primary Address: 731 MARKET STREET 6TH FLOOR

Street

SAN FRANCISCO

CALIFORNIA

94103

USA

City

State

Zip/Postal Code

Country

Telephone: 415-848-8980 Facsimile: 707-649-1221

Secondary Address: N/A

Street

City

State

Zip/Postal Code

Country

Primary Contact: MICHAEL SPEARMAN Title: PRESIDENT / FOUNDER

Telephone: 707-980-1664 Facsimile: 707-649-1221

Email: mspearman@patriotbeverage.com

Secondary Contact: LONNIE CHARLESON Title: CEO

Telephone: 949-636-1084 Facsimile: 949-215-4245

Email: lcharleson@patriotbeverage.com

State/Country of Incorporation or Organization: CALIFORNIA, USA

Entity Type: ☐ Corporation ☒ Limited Liability Company

☐ Partnership ☐ Other

Top Competitors: MONSTER, RED BULL, AND ROCK STAR ENERGY DRINKS

OWNER & MANAGEMENT INFORMATION

Principal Owners (complete name and business address):

Michael N. Spearman

731 Market Street 6th Fl, San Francisco, CA 94103

Richard J. Cairns

188 Waterside Circle, San Rafael, CA 94903

FWH Associates

One Maritime Plaza, Ste 1200, San Francisco, CA 94111

Principal Management:

President: MICHAEL SPEARMAN

Vice Presidents (s): N/A

Licensing Director: MICHAEL SPEARMAN

Sales Director: MATTHEW BRIDGES

Marketing Director: N/A

Art Director: N/A

Chief Financial Officer: MICHAEL NAEF

Years in business: TWO

FINANCIAL INFORMATION

Bank Reference:

Branch:

Address

Street

City

State

Zip/Postal Code

Country

Bank Contact

Telephone Number:

D & B Number: N/A

Most current D & B Rating: N/A

Please include a copy of your most recent D & B report.

Credit rating or other credit references

Does your company carry product liability insurance? ☒ Yes ☐ No

Carrier:

Individual and aggregate limit:

BUSINESS HISTORY

Company sales volume for most recent year:

Company sales volume for previous year:

Percent of dollar sales by distribution channel:

	<u>Percent of Current Sales Volume</u>	<u>Percent of Anticipate Sales for Marine Corps Acct.</u>	<u>Name of Leading Accounts</u>
Department Stores:	N/A	0%	N/A
Specialty Stores:	N/A	0%	N/A
Discount Stores:	N/A	0%	N/A
Catalog Sales:	N/A	0%	N/A
Toy Stores:	N/A	0%	N/A
Internet Web Sites:	N/A	0%	N/A

Current a/o 21 October 2009

MC Exchange:
Other (specify):

N/A
N/A

0%
0%

N/A
N/A

LICENSING HISTORY

Does your company currently manufacture products under license? ☐ Yes ☒ No
If Yes, – Current primary licenses held:

License 1

Company: _____
Licensed Property: _____
Products: _____
Number of year's license held: _____ Royalty percentage: _____

License 2

Company: _____
Licensed Property: _____
Products: _____
Number of year's license held: _____ Royalty percentage: _____

Has your company previously applied for a license with the U.S. Marine Corps or any other Department of Defense Agency? ☐ Yes ☒ No If yes, identify agency and property:

PROPOSED PRODUCT INFORMATION

Identify U.S. Marine Corps properties for which you are seeking a license:

1. UNITED STATES MARINE CORPS TEXT
2. EAGLE / GLOBE / ANCHOR LOGO

Description of product(s) and estimated prices per unit for each product you seek a license:

Product	Estimated Wholesale Price	Estimated Retail Price
REUP ENERGY BEVERAGE	(b)(4)	\$1.89 PER 16oz. UNIT

** additional space available at the end of the application

Requested territory to be covered: UNITED STATES AND INTERNATIONAL MARKETS

Requested term of license agreement: UNLIMITED

Estimated gross wholesale dollar sales for products manufactured under the U.S. Marine Corps license:

(b)(4)

Proposed annual minimum guarantee: 1) **Initial Stump Year 2010**

(b)(4)

Please Note:

Donations to U.S. Marine Corp with substantial growth once distribution base expands both domestic and international.

Proposed advance on royalties:

2) (b)(4)

Proposed royalty structure:

3) (b)(4)

Specify plans for distribution and sales i.e., retail accounts, MCX, Direct mail and Internet:

1. UNITED STATES MARINE CORPS EXCHANGE SYSTEM (MCX)
2. ON BASE OFF & ON PREMISE RETAIL ACCOUNTS
3. ON BASE VENDING MACHINE UNITS
4. INTERNET BASED SALES / DISTRIBUTION

Desired date that the product will be available to the public: 04/15/10

Will the product(s) be used in conjunction with any other proprietary marks?

X Yes ☐ No If Yes, identify marks:

REUP NAME WITH THE EAGLE - GLOBE - ANCHOR LOGO

Please describe your quality control procedures:

All graphics with EGA & REUP to be submitted for approval by Patriot Beverage Company directly to U.S. Marine Corp Department of Licensing before any final production is implemented.

Have any products you produced ever been involved in a product liability claim?

X No ☐ Yes If yes, please explain: _____

MARKETING AND MANUFACTURING INFORMATION

Proposed advertising budget for U.S. Marine Corps licensed products:

12 MONTH ROLLING FROM PRODUCT LAUNCH (b)(4)

Describe any advertising, promotion materials, or programs you plan to use to market the U.S. Marine Corps products:

ADVERTISING: MARINE CORPS ALTHLETICS PUBLICATION, LOCAL BASES INTERNET PUBLICATIONS, ON BASE MARKETING DEPARTMENTS LOCAL SPONSORING OF EVENTS AND PATRIOT BEVERAGE WEBSITE PUBLICATIONS.

PROMOTIONAL MATERIALS: BANNERS, REFRIGERATOR COOLERS, ROLLING COOLERS, COOLER SHELF TALKERS, BLOW UP BOTTLES, INFORMATION CARDS, ROLL UP BANNERS, WINDOW SIGNAGE, BUSINESS MARKETING INTRODUCTIONS AND T-SHIRT / WEARABLES

PROGRAMS: IN-STORE DEMO'S AND TASTINGS, MARINE CORPS EVENT SPONSORSHIPS

Will your company actually manufacture the product(s): ☐ Yes ☒ No

If yes, location of manufacturing plant (city/country): _____

If no, identify manufactures or subcontractors where the licensed products will be made:

1. Company: NORTHWESTERN EXTRACT

Address: 3590 N. 126TH STREET

	Street		
BROOKFIELD	WISCONSIN	53005	USA
City	State	Zip/Postal Code	Country

Contact/Position: MICHAEL PETER

Telephone Number: 262-781-6670 E-mail: michael@nwextract.com

2. Company: FORTITECH

Address: 2105 TECHNOLOGY DRIVE

	Street		
SCHENECTADY	NEW YORK	12308	USA
City	State	Zip/Postal Code	Country

Contact/Position: DANA BROWN

Telephone Number: 518-372-5155 E-mail: brown.dana@fortitech.com

3. Company: BALL CORPORATION (ALUMINUM CAN PRODUCER)

Address: 501 NORTH SIXTH STREET

	Street		
MONTICELLO	INDIANA	47960	USA
City	State	Zip/Postal Code	Country

Contact/Position: SUZETTE D. COMPAGNO

Telephone Number: 303-460-5599 E-mail: scompagn@ball.com

4. Company: KRIER FOODS INC. (CO-PACKING FACILITY)

Address: 520 WOLF ROAD

	Street		
RANDOM LAKE	WISCONSIN	53075	USA
City	State	Zip/Postal Code	Country

Contact/Position: STEVE R. IHRCKE

Telephone Number: 303-460-5599 E-mail: steve@krierfoods.com

Does the manufacturer or any sub-contractor use any child labor in the manufacturing process? ☐ Yes ☒ No (If yes, attach details regarding working conditions and pay on a separate sheet of paper.)

ADDITIONAL INFORMATION

Please enclose any additional information you believe will help the U.S. Marine Corps evaluate your license request. This additional information should include but not be limited to providing the following:

Non-returnable product samples of similar products to those proposed for evaluation of materials, quality and workmanship.

Catalogs, brochures and promotional materials that display your company's products.

Materials or drafts showing how your company proposes to use the U.S. Marine Corps emblem on products.

Any other information that will help demonstrate your company's ability to successfully develop and market the proposed products.

PROSPECTIVE LICENSEE STATEMENT

The undersigned hereby affirms that answers to the above questions are true and complete, except where such question calls for estimates or projections, and that all questions have been answered in good faith and to the best of the applicant's knowledge.

Name and Title of individual supplying information: MICHAEL SPEARMAN

Signature:

(b)(6)

Date: 03/10/10

RETURN COMPLETE APPLICATION TO:

Headquarters United States Marine Corps
Public Affairs (PA)
Attn: Trademark Licensing Office
3000 Marine Corps Pentagon
Room 4B548
Washington DC, 20350-3000
703-614-7678 (phone)
Trademark_licensing@usmc.mil

Additional Product Information

[illegible]



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3000 MARINE CORPS PENTAGON
WASHINGTON, DC 20350-3000

IN REPLY REFER TO:

April 22, 2010

Marine Corps Trademark Licensing Office
Headquarters United States Marine Corps
Public Affairs (PA)
3000 Marine Corps Pentagon
Washington DC, 20350-3000

Patriot Beverage Company
Attn: Michael Spearman
731 Market Street, 6th Floor
San Francisco CA, 94103

Dear Mr. Spearman

Congratulations, the Patriot Beverage Company United States Marine Corps Trademark License Agreement is now final.

The Patriot Beverage Company energy beverage design submitted for use of USMC owned marks have been evaluated and found in compliance with Marine Corps design guidelines. You are now authorized to produce USMC trademarks on 16oz RE-UP energy beverages in accordance with your license agreement.

Subject to due process, the United States Marine Corps may suspend this approval by written notice if the holder ceases to comply with the standards stated in the license agreement and/or fails to meet design guidelines

The Trademark Licensing Office is currently taking steps to secure a single source hang tag label manufacturer so that all officially licensed USMC products are properly identified. In the near future please be prepared to purchase these required labels from an authorized vendor.

We are hopeful of achieving a successful business relationship with you in which we can provide quality Marine Corps products to our patriotic patrons.

Ooh-Rah!

Sincerely,

(b)(6)

Program Manager
Marine Corps Trademark Licensing Office
703-614-7678

UNITED STATES MARINE CORPS

TRADEMARK LICENSE AGREEMENT

This Agreement is made, entered into, and effective as of the date of execution of the last party hereto, between the United States Marine Corps, an agency of the United States government, Public Affairs (PA) Marine Corps Trademark Licensing Office, 3000 Marine Corps Pentagon, Washington D.C. 20350-3000 (hereinafter referred to as "OWNER"), and Johnny & Mike Drink LLC (dba Patriot Beverage Company) 731 Market Street 6th Floor, San Francisco, CA, 94103, (hereinafter referred to as "LICENSEE"). In consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereby agree as follows:

1. DEFINITIONS

- 1.1. CREATION means all concepts, artwork, designs, images, names, advertisements, tags, labels, hang tags, photographs, names, likenesses, symbols, logos, copyrights, trade dress, trademarks or the like, and other things, incorporating, in whole or in part, the PROPERTY or used in association with the PROPERTY in any manner.
- 1.2. DISTRIBUTION CHANNELS shall mean only those channels of distribution specifically set forth in EXHIBIT 9.
- 1.3. DISTRIBUTOR means a purchaser authorized to purchase LICENSED ARTICLES from LICENSEE for resale to an entity other than the end user, and which is authorized to advertise, market, and/or promote the LICENSED ARTICLES only to the trade.
- 1.4. LICENSED ARTICLES means each of the articles of merchandise or products, and their packaging or component parts, bearing the PROPERTY as set forth in EXHIBIT 1.
- 1.5. LICENSED TERRITORY means the country or countries, or portions thereof, set forth in EXHIBIT 2.
- 1.6. MANUFACTURER means a person or entity appointed by LICENSEE and approved by OWNER to manufacture LICENSED ARTICLES, and/or any other materials bearing the PROPERTY.

- 1.7. NET SALES means gross invoice price invoiced to DISTRIBUTORS or customers less actual and customary returns and separately listed applicable taxes. Actual and customary returns are limited to five percent (5%) of the total of the gross invoice price for all of the LICENSED ARTICLES sold during each calendar year. No other deduction or recoupment shall be allowed of any kind, including, without limitation and by way of example, cash discounts, early payment discounts, year-end rebates, costs incurred in manufacturing, selling, distributing, shipping and handling costs, advertising (including cooperative and promotional allowances, fixturing, merchandising guides, displays, or the like), uncollectable accounts, commissions, or any other amounts, nor shall such deductions or recoupment be netted against the sales price to arrive at the gross invoice price or any reduced gross invoice price. A sale shall be deemed to have occurred when a LICENSED ARTICLE is shipped, billed out or paid for, whichever is first. All sales by LICENSEE of LICENSED ARTICLES to any of its affiliates or to any entity or person associated with LICENSEE, including all inter-company transactions, shall be carried on LICENSEE's books of account at the full regular wholesale price charged to unrelated third parties, and LICENSEE shall account for and pay ROYALTY PAYMENTS on all such sales as if they occurred on an arms-length basis to an unrelated wholesale account.
- 1.8. PREMIUMS means any LICENSED ARTICLE sold at cost or near cost, given away free of charge, or otherwise used for the purpose of increasing the sale, promoting, or publicizing any other product or any service, including but not limited to, incentives for sales forces, trade and consumer promotions, and incentives for fundraising.
- 1.9. PROMOTION COMMITMENT means the amount specified in EXHIBIT 10 which LICENSEE agrees to spend during each year of this Agreement on consumer advertising and promotion activities as detailed in Sections 14.2 and 14.3.
- 1.10. PROPERTY means the names, symbols, designs, logos, artwork, copyrights, trade dress, trademarks and/or other Marine Corps Intellectual Property set forth in SCHEDULE A.
- 1.11. ROYALTY PAYMENTS means the total NET SALES of all LICENSED ARTICLES sold, multiplied by the applicable ROYALTY RATE as further detailed in Section 3.1.
- 1.12. ROYALTY RATE means the percentage of NET SALES to be paid by LICENSEE to OWNER, as set forth in EXHIBIT 4.
- 1.13. SECONDS means merchantable LICENSED ARTICLES not suitable for sale at list price because they contain minor production or material flaws not affecting proper usage of the PROPERTY or the LICENSED ARTICLE.
- 2. GRANT OF LICENSE.**

- 2.1. **NON-EXCLUSIVE LICENSE.** OWNER hereby grants to LICENSEE a non-exclusive license to use the PROPERTY in the LICENSED TERRITORY solely upon or in connection with LICENSED ARTICLES in the DISTRIBUTION CHANNELS during the TERM pursuant to the terms and conditions of this Agreement.
- 2.2. **TERM.** The term of the license granted by this Agreement shall be for the period set forth in EXHIBIT 3 (the "TERM"), unless terminated in accordance with the provisions hereof.
- 2.3. **LIMITATIONS ON LICENSE.** The license granted herein shall be limited to the express terms set forth herein and shall not include any right of LICENSEE to do any of the following acts, each of which is expressly prohibited: (a) manufacture any item whatsoever, including the packaging thereof, bearing the PROPERTY, except for LICENSED ARTICLES; (b) grant sublicenses or assignments in or of the license granted herein or any portion hereof, except as approved in writing by OWNER and/or, in the case of MANUFACTURERS, where the sublicensed MANUFACTURER has executed a Manufacturers Agreement as required by Section 12 herein; (c) produce any LICENSED ARTICLES under any name other than LICENSEE's name set forth on Page 1 (One) of this Agreement; (d) use or knowingly permit the use of any of the PROPERTY in any manner or for any purpose not specifically authorized under this Agreement; (e) change, alter, add to, delete from, augment, or modify the LICENSED ARTICLES in any way or mix the PROPERTY with any other unauthorized indicia; (f) sell the LICENSED ARTICLES to any person or entity for incorporation into another product or souvenir that has not been properly licensed by OWNER; or (g) without written approval by OWNER, incorporate or use the PROPERTY or similar words or images thereto in conjunction with LICENSEE's company name, or as a trademark, or as a generic name. No licenses granted hereunder for the manufacture, sale, or distribution of LICENSED ARTICLES are to be used as PREMIUMS, or otherwise sold for less than the usual selling price for the purpose of increasing sales. Except as otherwise explicitly set forth herein, LICENSEE shall not use any of the PROPERTY in connection with (i) any unauthorized sweepstakes, lottery, game of chance or any similar promotional sales device, scheme, or program, and/or (ii) any co-branding, commercial tie-ins, premiums, and/or promotion of any products, services or businesses other than the LICENSED ARTICLES.
- 2.4. **RESERVATION OF RIGHTS.** OWNER explicitly reserves and retains all rights not expressly granted to LICENSEE herein.
3. **ROYALTIES, MINIMUM ROYALTIES, REPORTS AND PAYMENTS, BUSINESS PLAN, DISTRIBUTION AND MARKETING, AND SALE TO OWNER**
- 3.1. **ROYALTY PAYMENTS.** LICENSEE shall pay to OWNER an amount equal to the ROYALTY RATE of all NET SALES of LICENSED ARTICLES made during the TERM (the "ROYALTY PAYMENTS"). All sales made on a letter of credit or F.O.B. basis, or to a DISTRIBUTOR shall be at 140% of the ROYALTY RATE set forth herein. Payments shall be sent and made payable to OWNER IN ACCORDANCE WITH Section 3.8. below.

- 3.2. **ADVANCE PAYMENT.** LICENSEE shall pay OWNER the amount on the date set forth in EXHIBIT 5 (or upon execution by OWNER if no date is set forth in EXHIBIT 5) as a non-refundable advance payment (the "ADVANCE PAYMENT") to be credited against ROYALTY PAYMENTS that become due during the applicable calendar year as set forth in EXHIBIT 6. Such ADVANCE PAYMENT shall be sent and made payable to OWNER in accordance with Section 3.8 below.
- 3.3. **MINIMUM ROYALTIES.** Subject to Section 3.5 and notwithstanding any other contrary provision herein, LICENSEE agrees to pay OWNER the difference between (i) the minimum guaranteed ROYALTY PAYMENTS ("MINIMUM ROYALTIES") set forth in EXHIBIT 6, and (ii) running ROYALTY PAYMENTS actually paid in accordance with Sections 3.1 and 3.8. MINIMUM ROYALTIES shall be paid in accordance with the payment schedule set forth in EXHIBIT 6, *provided* that if no date is set forth in EXHIBIT 6, payment shall be made in equal quarterly installments on or before the 15th of March, June, September, and December of each calendar year. The MINIMUM ROYALTIES set forth in this Section 3.3 are obligations of LICENSEE to OWNER and are fully earned by OWNER upon execution of this Agreement. Subject to Section 3.5 and notwithstanding any other contrary provision herein, the difference between (i) all running ROYALTY PAYMENTS paid or payable, for each calendar year and each country or category and (ii) MINIMUM ROYALTIES shall be paid to OWNER within thirty (30) days from the end of each calendar year. Subject to Section 3.5 and notwithstanding any other contrary provision herein, if this Agreement is terminated by OWNER because of any breach by LICENSEE, without prejudice to OWNER's other right and remedies, the greater of (i) all running ROYALTY PAYMENTS and (ii) all of the MINIMUM ROYALTIES for the TERM shall be deemed to be fully earned and shall be paid to OWNER within thirty (30) days from the effective date of any such termination.
- 3.4. **MINIMUM NET SALES.** LICENSEE shall maintain minimum sales of LICENSED ARTICLES in each annual period as set forth in EXHIBIT 7.
- 3.5. **NO CROSS-COLLATERALIZATION.** Except as explicitly permitted in EXHIBIT 6, any amount by which actual ROYALTY PAYMENTS paid or payable to OWNER hereunder exceed the MINIMUM ROYALTIES for any time period, geography, distribution channel, or other category during the TERM hereof may not be credited or applied to MINIMUM ROYALTIES paid or payable for any other time period, geography, distribution channel, or other category, as applicable.
- 3.6. **ROYALTY REPORT.** All Royalty Reports shall be in the form of SCHEDULE B, or a substantially similar alternative format approved by OWNER (the "ROYALTY REPORT"). LICENSEE agrees that OWNER shall have the right, in its sole discretion, upon thirty (30) days advance written notice to LICENSEE, to change the ROYALTY REPORT form. Such change of the ROYALTY REPORT form may include an OWNER approved electronic form to be provided to OWNER by LICENSEE.

- 3.7. **REPORTS AND PAYMENTS.** Within thirty (30) days from the end of each calendar quarter, LICENSEE shall furnish ROYALTY REPORTS and make corresponding ROYALTY PAYMENTS to OWNER in U.S. Dollars pursuant to this Section 3 at LICENSEE's sole expense. ROYALTY REPORTS shall be furnished to OWNER whether or not any LICENSED ARTICLES have been sold and whether or not ROYALTY PAYMENTS are due and payable for the calendar quarter.
- 3.8. **METHOD OF PAYMENT AND ROYALTY REPORTS.** All ROYALTY PAYMENTS, ROYALTY REPORTS, other payments, and any applicable interest shall be made payable to "Marine Corps Trademark Licensing Office" by check or other OWNER approved method of payment, and sent to OWNER:

Headquarters United States Marine Corps
Public Affairs (PA)
Trademark Licensing Office
3000 Marine Corps Pentagon
Room 4B548
Washington D.C.
20350-3000

All bank fees related to any payments required to be made by LICENSEE under this Agreement shall be the sole expense of LICENSEE, so that OWNER shall receive the full amount of all payments without reduction.

All ROYALTY REPORTS and any other report required by this Agreement shall be signed by LICENSEE's authorized representative and certified as accurate, and shall be sent to OWNER by express delivery on or before the due date.

If inconsistencies or mistakes are discovered in such ROYALTY REPORT or payments, they shall immediately be rectified and the appropriate payment shall be made by LICENSEE if an underpayment was made by LICENSEE, or set off against LICENSEE's next ROYALTY PAYMENT and/or other payment to OWNER if an overpayment was made by LICENSEE.

- 3.9. **INTEREST DUE ON ALL PAST DUE AMOUNTS.** OWNER shall assess interest, penalties, and administrative costs in accordance with the Federal Claims Collections Standards, 31 CFR Parts 900-904, on all payments due OWNER which are not timely paid by LICENSEE.
- 3.10. **MONETARY CONVERSION AND MISCELLANEOUS PROVISIONS.** Any and all payments required hereunder shall be made in U.S. currency. If any currency conversions are required under this Agreement, LICENSEE agrees that all currency conversions shall be made by utilizing the exchange rate in effect on the due date for any such payment as reported in The Wall Street Journal. The cost of conversion of all

local currencies into U.S. currency shall be the sole expense of LICENSEE. Any cost of conversion built into a bank's exchange rate must be accounted for with a corresponding increase in the amount being converted so that all the costs of conversion of all currencies, as well as wire transfers or other bank fees, shall be the sole expense of LICENSEE, so that OWNER shall receive the full amount of payments without reduction.

LICENSEE shall withhold as taxes on all payments to be made to OWNER only such amounts as are absolutely required to be withheld by law in the country from which payment is being made. LICENSEE shall submit to OWNER originals of the remittance voucher and the official receipt evidencing the payment of the corresponding taxes. LICENSEE shall fully cooperate with OWNER and provide such information and records as OWNER may require in connection with any application by OWNER to the tax authorities in the LICENSED TERRITORY and/or the United States of America including but not limited to, the obtaining of a credit for any withholding tax paid in the LICENSED TERRITORY or any country from which ROYALTY PAYMENTS and any other payments are being made by LICENSEE to OWNER pursuant to this Agreement.

- 3.11. BUSINESS PLAN.** Within thirty (30) days after the end of each calendar year, LICENSEE shall provide OWNER a written business plan detailing information related to LICENSEE's plans (as related to the subject matter of this Agreement) for the following calendar year, including, but not limited to, LICENSEE's product development plans, advertising, merchandising and promotional activities, good faith estimates of NET SALES for the following calendar year, and a breakdown of such estimated NET SALES by key accounts or distribution channels. In the event LICENSEE materially deviates from such business plan, LICENSEE shall promptly provide OWNER with written notice thereof and shall, within thirty (30) days after sending such notice, provide OWNER with a revised business plan. In addition, within ten (10) days after the end of each calendar quarter, LICENSEE shall also provide OWNER with a written good faith estimate of updated revenue projections for the next calendar quarter consistent with the then-current orders for LICENSED ARTICLES.
- 3.12. DISTRIBUTION AND MARKETING OF LICENSED ARTICLES.** LICENSEE recognizes the PROPERTY has a reputation for being associated with high quality products and the distribution, sale and marketing of LICENSED ARTICLES might affect the reputation of the PROPERTY, that such distribution, sale and marketing of the LICENSED ARTICLES is subject to the approval and control of OWNER who might, at its sole discretion and subject to applicable laws and regulations, restrict or limit the distribution and sale of the LICENSED ARTICLES to certain channels or means of distribution, sale or marketing. This license is granted only for sale in the DISTRIBUTION CHANNELS and for the LICENSED TERRITORY. LICENSEE shall not sell LICENSED ARTICLES outside the LICENSED TERRITORY or sell to others with knowledge they intend to ship, distribute or sell LICENSED ARTICLES outside the LICENSED TERRITORY or for sale outside the DISTRIBUTION CHANNELS, without the prior written approval of the OWNER.

3.13 SALE TO OWNER. LICENSEE agrees to sell to OWNER and the Marine Corps Exchange (MCX) such quantities of the LICENSED ARTICLES at the lowest published/invoiced wholesale price and on as good terms as LICENSEE sells similar quantities of the LICENSED ARTICLES to the general trade. Such sales shall be royalty-free and shall be reported to OWNER pursuant to section 3.7.

3.14. LICENSEE EXPENSES. Except as otherwise expressly provided herein, all acts, duties, obligations and responsibilities of LICENSEE under this Agreement shall be at LICENSEE'S sole cost and expense. No costs of any kind, paid or incurred, directly or indirectly, by LICENSEE or any person or entity associated with LICENSEE, any amounts reimbursed by LICENSEE to OWNER, or any other activities of LICENSEE hereunder, shall be recouped, deducted or otherwise charged to OWNER or against any amounts owed to OWNER under this Agreement.

4. RECORDS, AUDIT AND AUDITOR'S CERTIFICATION

4.1. RECORDS. During the TERM of this Agreement and for at least three (3) years thereafter, LICENSEE shall keep in its possession or under its control accurate records covering all transactions relating to this Agreement. Records shall include, but not be limited to, invoices, correspondence, financial information, inventory records, manufacturing, quality control and approvals. LICENSEE shall consistently use a separate symbol or number to identify all LICENSED ARTICLES.

4.2. AUDIT. OWNER shall have the right to conduct audits and make copies of all records listed in Section 4.1 above, and to make a physical inventory count of LICENSED ARTICLES in production and/or storage. If the audit reveals an underpayment of ROYALTY PAYMENTS, LICENSEE agrees to immediately pay OWNER any past due ROYALTY PAYMENTS plus applicable interest. If the audit reveals a royalty underpayment of three percent (3%) or more, or if LICENSED ARTICLES were sold without final approval for the audit period, LICENSEE agrees to reimburse OWNER for all of its out-of-pocket costs and expenses of the audit for (a) the audited period (in addition to past due ROYALTY PAYMENTS plus applicable interest); and (b) a follow-up audit to be conducted at a time of OWNER's choosing within twenty four (24) months of the conclusion of the original audit. OWNER shall invoice LICENSEE for such audit expenses and LICENSEE shall pay such invoice within thirty (30) days.

Audits may be performed by OWNER's own employees, employees of another U.S. Government agency, and/or its designated independent auditor, all of whom shall hold LICENSEE's audit information in confidence, pursuant to Section 11, below. Audit information shall only be used for purposes of this Agreement, unless used to judicially enforce obligations of LICENSEE.

The exercise by OWNER, in whole or in part, or at any time or times, of the right to inspect or audit records and accounts or of any other right herein granted, or the acceptance by OWNER of any ROYALTY REPORT, or the receipt or deposit by OWNER of any ROYALTY PAYMENT from LICENSEE, shall be without prejudice to any other rights or remedies of OWNER and shall not stop or prevent OWNER from thereafter disputing the accuracy of any such ROYALTY REPORT.

5. APPROVALS.

- 5.1. APPROVAL PROCESS. PRIOR TO THE FULL EXECUTION OF THIS LICENSE AGREEMENT, ANY PRODUCT DEVELOPMENT DONE BY LICENSEE IS AT THE SOLE RISK OF LICENSEE. UNDER NO CIRCUMSTANCES MAY LICENSEE SELL OR SHIP PRODUCTS BEARING THE PROPERTY PRIOR TO THE FULL EXECUTION OF THIS AGREEMENT, EXCEPT BY OWNER'S EXPRESS PRIOR WRITTEN CONSENT.** Prior to any sale or distribution, LICENSEE, at its expense, shall submit to OWNER all items including, but not limited to, products, packaging, labeling, point of sale materials, trade show displays, sales materials and advertising (subject to Section 14.3) bearing the PROPERTY and/or CREATIONS, and if such items are in a foreign language, certification that the translations of such items are accurate, for OWNER's advance written approval, in OWNER's sole and absolute discretion, at all stages listed below.

Concept	Rough sketches or layout concepts;
Prototype	Prototypes or finished artwork; and
Final	Pre-production sample.

The following rules shall apply to **all stages** of the approval process:

1. LICENSEE shall not make any use of, sell or distribute such items as listed in this Section 5.1, prior to OWNER granting final written approval.
2. OWNER shall have twenty (20) business days from OWNER's actual receipt to review and respond in writing to each of LICENSEE's submissions. If OWNER does not respond to such submission within such twenty (20) business day period, such submission shall be deemed disapproved.
3. OWNER, in its sole discretion, reserves the right to reject an item approved at a prior stage if in its physical form it does not meet OWNER's marketing or quality standards, or departs from the approved sample.
4. In the event of any modification or change in quality of the items, whether during the approval process or after final approval has been granted, such items shall be re-submitted to OWNER for approval.
5. LICENSEE shall disclose all sources for any artwork not supplied by OWNER.

6. OWNER shall return prototypes and final artwork upon LICENSEE's written request and at LICENSEE's expense provided that LICENSEE supplies photographs of same and submits such written upon LICENSEE's submission of the prototypes(s) or final artwork.
7. All Submissions from LICENSEE to OWNER become property of OWNER, unless LICENSEE provides OWNER with written notification requesting the return of the items(s) at the time of the LICENSEE's submission of the item(s) to the OWNER.
8. LICENSEE shall not have any rights against OWNER for damages or other remedies by reason of OWNER's failure or refusal to grant any approval referred to in this Section 5.
9. LICENSEE, at OWNER'S written request, shall supply OWNER with at least four (4) production samples of each LICENSED ARTICLE.
10. LICENSEE agrees to furnish to OWNER its shipper's account number for OWNER's use to transmit samples to expedite the approval process.

- 5.2. **RIGHT TO SUSPEND APPROVAL PROCESS.** In addition to its other remedies, OWNER reserves the right to suspend the approval process after OWNER has given LICENSEE written notice of breach of this Agreement, until LICENSEE has cured the breach to OWNER's satisfaction.
- 5.3. **NO WAIVERS.** Approvals granted by OWNER under this Section 5 shall extend only to LICENSEE's use of the PROPERTY, CREATIONS, or OWNER's artwork and designs. The provisions for indemnity under this Agreement and LICENSEE's other obligations shall not be waived by approval of LICENSED ARTICLES by OWNER.
- 5.4. **NO COMPETING PRODUCTS.** LICENSEE shall not develop, manufacture, sell, supply, or market products that the OWNER determines, in its sole and exclusive discretion, directly compete with the LICENSED ARTICLES without OWNER's prior written approval, which shall be within OWNER's sole and exclusive discretion.
- 5.5. **OWNER'S ARTWORK.** OWNER, in its sole discretion, and to the extent available, shall provide LICENSEE, at LICENSEE's expense, available artwork and designs, which LICENSEE can only use on LICENSED ARTICLES and/or related marketing, promotional and advertising materials in accordance with this Section 5.

6. QUALITY CONTROL

- 6.1 LICENSEE COMPLIANCE WITH APPLICABLE LAW.** All LICENSED ARTICLES shall be manufactured, sold, labeled, packaged, distributed, and advertised in accordance with (i) all applicable laws, regulations, and import and export controls in each applicable country including, without limitation, all child-safety laws and regulations in each legal jurisdiction within the LICENSED TERRITORY in which LICENSEE sells the LICENSED ARTICLES; and (ii) SCHEDULE D attached hereto.
- 6.2. SECONDS AND DISPOSAL.** If, during the manufacture of the LICENSED ARTICLES, any SECONDS are produced, LICENSEE shall destroy such SECONDS unless OWNER, in its sole discretion, provides LICENSEE with express written instructions on how to otherwise dispose of such SECONDS.
- 6.3. HIGH QUALITY OF LICENSED ARTICLES.** All LICENSED ARTICLES and all packaging and promotional materials shall be of highest quality (which quality shall be at least the same as the highest quality for similar goods within LICENSEE's industry) consistent with the standing of the PROPERTY and all LICENSED ARTICLES shall be free of defects in design, materials, and workmanship. LICENSEE shall manufacture the LICENSED ARTICLES in accordance with the approved designs, materials, tolerances of manufacture and assembly, testing, and packaging specifications approved by OWNER. All use of the PROPERTY by LICENSEE and the style and appearance of all LICENSED ARTICLES and all packaging and promotional materials shall be subject to OWNER's approval to enable OWNER to ensure that OWNER's quality standards are being maintained. LICENSEE may not use the PROPERTY in any manner which would disparage or tarnish or dilute the distinctive quality of the PROPERTY or the reputation and goodwill embodied in the PROPERTY or which would reflect adversely on the PROPERTY or OWNER, or any of OWNER's products or services. Whether this standard is met shall be in OWNER's sole and exclusive discretion. LICENSEE shall not use the PROPERTY in any way which is not authorized and approved in advance by OWNER as set forth in this Agreement.
- 6.4. RIGHT TO INSPECT.** LICENSEE agrees to promptly furnish OWNER with the addresses of LICENSEE's production facilities for the LICENSED ARTICLES and the names and addresses of each MANUFACTURER, if any, which is producing LICENSED ARTICLES for LICENSEE. OWNER, or its duly authorized representative, shall have the right, during regular business hours and after 48 hours notice, at its own expense to make inspections of any production facilities where any of the LICENSED ARTICLES, or any components thereof are being manufactured to determine whether LICENSEE is adhering to the requirements of this Agreement relating to the nature and quality of the LICENSED ARTICLES, the use of the PROPERTY in connection therewith, and the requirements of SCHEDULE D.
- 7. LICENSED ARTICLE MARKINGS**

- 7.1. **LABELING REQUIREMENTS.** LICENSEE shall use and display the PROPERTY only in such form and manner that are specifically approved by OWNER. LICENSEE shall cause to appear on all LICENSED ARTICLES produced hereunder and on their tags, packaging, advertising and promotional materials such legends, markings and notices as OWNER may request, which until further notice shall be "TM or ® (if the PROPERTY is a registered mark) United States Marine Corps. Officially Licensed Product of the United States Marine Corps (www.marines.com and 1.800.marines)." Before using or releasing any such material, LICENSEE shall submit to OWNER, for its approval, finished art work for tags, labels, packaging, advertising and promotional materials which shall not be used or released prior to LICENSEE's receipt of OWNER's prior written approval. Any article or other materials submitted and not approved by OWNER within twenty (20) business days after receipt by OWNER shall be deemed to have been disapproved.

8. **INTELLECTUAL PROPERTY PROTECTION**

- 8.1 **OWNERSHIP OF INTELLECTUAL PROPERTY.** Ownership of all CREATIONS shall be in the name of OWNER and owned solely by OWNER. All CREATIONS created by LICENSEE or any of its employees or agents which qualify as a "work-made-for-hire" under applicable copyright laws in the LICENSED TERRITORY are agreed to be "work-made-for-hire" owned by OWNER. In such event, LICENSEE warrants and represents to OWNER that any employees referred to in the preceding sentence are true employees of LICENSEE. If any CREATION is made by a third party for or on behalf of LICENSEE or any of its employees, LICENSEE shall obtain an assignment to OWNER from such third party using SCHEDULE C (Artwork Assignment Agreement), and LICENSEE shall provide true and correct copies of such documentation to OWNER. In the event any CREATION is not deemed a "work-made-for-hire" or if title to any CREATION does not, by operation of law, vest in OWNER, LICENSEE hereby irrevocably and in perpetuity transfers and assigns to OWNER all worldwide right, title and interest in and to any CREATION (including all copyright rights and intellectual property rights thereto). LICENSEE acknowledges that its use of the PROPERTY in the LICENSED TERRITORY inures solely to the benefit of OWNER. In the event that any rights in and to the PROPERTY are deemed to accrue to LICENSEE, LICENSEE does hereby irrevocably and in perpetuity assign all worldwide right, title and interest in and to the same to OWNER and shall, upon request, confirm such assignment in writing. LICENSEE further agrees that it shall not, directly or indirectly through others, file any applications for registration of copyright, trademark, or service mark with respect to the PROPERTY, except in OWNER's name with OWNER's permission. LICENSEE agrees that it shall, at any time both during the TERM and thereafter, execute such documents, as OWNER may deem necessary or desirable for effecting the provisions of this Section 8.1.
- 8.2 **PROTECTION.** LICENSEE acknowledges the ownership, validity, unique and widespread celebrity, great value, and goodwill of the PROPERTY and acknowledges that all rights therein (including trademark and copyrights) and goodwill attached thereto belong exclusively to OWNER, that the PROPERTY has secondary meanings in the minds of the public and that all use of the PROPERTY shall inure to the benefit of OWNER. LICENSEE shall not, during the TERM of this Agreement, attack or put in issue the title or any rights of OWNER in and to the PROPERTY, and OWNER's artwork and designs.

- 8.3 REGISTRATIONS.** LICENSEE shall assist OWNER at OWNER's expense, to the extent necessary in OWNER's opinion, in procuring, protecting and defending any of OWNER's rights in the PROPERTY, in the filing and prosecution of any trademark application, copyright application, or other applications for the PROPERTY, the recording or canceling of this Agreement, and the publication of any notices or the doing of any other act or acts with respect to the PROPERTY, including the prevention of the use thereof by an unauthorized person, firm or corporation, that in the judgment of OWNER may be necessary or desirable. For these purposes, LICENSEE shall supply to OWNER, free of cost to OWNER, such samples, containers, labels, and similar materials as may reasonably be required in connection with any such actions. At its sole discretion and expense, OWNER shall use commercially reasonable efforts to file all trademark applications, register the PROPERTY within the LICENSED TERRITORY with respect to the LICENSED ARTICLES, and, in OWNER's opinion, in those countries outside the LICENSED TERRITORY where LICENSED ARTICLES may be sourced to the extent such applications have not already been filed.
- 8.4 USE OF PROPERTY.** LICENSEE shall not use the PROPERTY in any business sign, business cards, stationery, or forms, nor as part of its company name, corporate name, trade name, or Internet or domain name. In addition, LICENSEE shall not represent that it in any way has any right, title, or interest in or to any of the PROPERTY or in any registration of the PROPERTY other than as a licensee.
- 8.5 NOTICE OF INFRINGEMENT.** LICENSEE shall notify OWNER promptly in writing of any alleged infringements or imitations by others of the PROPERTY that come to LICENSEE's attention. OWNER shall have the sole right to determine what, if any, actions shall be taken on account of any such infringements or imitations. If OWNER so desires it may prosecute any claims or suits in its own name or require LICENSEE to join as a party thereto, all at OWNER's expense.
- LICENSEE shall not institute any suit or take any action on account of any such infringements or imitations. LICENSEE shall not have any rights against OWNER for damages or other remedy by reason of OWNER's decision not to prosecute any alleged infringements or imitations by others of the PROPERTY or OWNER's artwork and designs. LICENSEE assumes the risk that there may be counterfeit and/or infringing articles of manufacture.
- 8.6 DAMAGES FOR UNAUTHORIZED USE.** LICENSEE acknowledges that the PROPERTY or CREATIONS possess special, unique, and extraordinary characteristics, which make difficult the assessment of monetary damages, which OWNER would sustain by LICENSEE's unauthorized use. LICENSEE recognizes that OWNER would suffer irreparable injury by such unauthorized use and agrees that injunctive and other equitable relief are appropriate in the event of a breach of this Agreement by LICENSEE. Such remedy shall not be exclusive of any other remedies available to OWNER, nor shall it be deemed an election of remedies by OWNER.
- 9. WARRANTIES AND INDEMNIFICATION.**
- 9.1 WARRANTIES.** LICENSEE hereby warrants and represents to OWNER that:

1. All LICENSED ARTICLES, packaging, labeling, advertising, and sales materials are free from defects, merchantable, fit for their intended use, materially conform to samples which received final approval, comply with all legally applicable treaties, laws, regulations, standards, and guidelines including, but not limited to, health, product safety, and labeling, and that LICENSEE has obtained the necessary approvals and certification(s) throughout the LICENSED TERRITORY.
2. All CREATIONS and other content provided by LICENSEE are: not a violation, infringement, unauthorized use, or misappropriation of any intellectual property of any third party; not libelous or contrary to law; and to the best of LICENSEE's knowledge not the subject of any litigation or claim.
3. Pursuant to Section 8, it has obtained a written assignment to OWNER of all artwork made by a third party.
4. It, and each MANUFACTURER DISTRIBUTOR, or other facility involved in the manufacture, distribution, or sale of LICENSED ARTICLES are in full compliance with the provisions of SCHEDULE D.

9.2. INDEMNIFICATION BY LICENSEE. LICENSEE agrees to indemnify and hold harmless OWNER, its officials, employees, and agents (collectively, "OWNER INDEMNIFIED PARTIES") from any act or omission of LICENSEE which liability arises out of any lawsuit, legal proceeding, action, claim or demand (collectively, "Claim") based upon:

1. Any alleged defect in the LICENSED ARTICLES or the use or condition thereof;
2. Any alleged violation, infringement, unauthorized use, or misappropriation of any intellectual property of any third parties arising under or in conjunction with the manufacture, sale, and/or use of any LICENSED ARTICLES;
3. Any breach or violation of any warranty, representation, term, or condition of this Agreement by LICENSEE, any MANUFACTURER, or any DISTRIBUTOR; or
4. Any breach or violation of any law or regulation by LICENSEE, any MANUFACTURER, or any DISTRIBUTOR.

This indemnification shall include all damages, interest payments, reasonable attorney's fees, costs, and expenses which may be levied against or incurred by OWNER INDEMNIFIED PARTIES, including costs of collection of all amounts owed to OWNER by LICENSEE and costs of all actions by OWNER against LICENSEE to enforce LICENSEE's compliance with this Agreement.

This obligation to indemnify and hold harmless OWNER INDEMNIFIED PARTIES shall not apply to any Claim which is solely due to the negligence or wrongful acts of OWNER INDEMNIFIED PARTIES, or any alleged copyright or trademark infringement which is based on a claim that the approved use by LICENSEE of the PROPERTY infringes the copyright or trademark rights of such third parties.

LICENSEE understands that OWNER must be defended in all litigation by the U.S. Department of Justice ("DOJ") unless DOJ authorizes a different arrangement. Accordingly, LICENSEE shall not undertake to conduct the defense and/or settlement of any Claim except upon approval of OWNER. LICENSEE shall not settle any Claim in respect of which indemnity may be sought hereunder, whether or not any OWNER INDEMNIFIED PARTY is an actual or potential party to such Claim without OWNER's prior written consent, it being expected that such consent would not be withheld with respect to any proposed settlement (i) in which all plaintiffs or claimants affirmatively and unconditionally absolve and release each OWNER INDEMNIFIED PARTY from any responsibility or liability with respect thereto and the subject matter thereof, (ii) which does not impose any actual or potential liability upon any OWNER INDEMNIFIED PARTY, and (iii) which does not contain or imply a factual admission by or with respect to any OWNER INDEMNIFIED PARTY or any adverse statement or implication with respect to the character, professionalism, due care, loyalty, expertise, or reputation of any OWNER INDEMNIFIED PARTY or any action or inaction by any OWNER INDEMNIFIED PARTY.

Compliance by LICENSEE with the insurance provision of this Agreement shall not relieve LICENSEE from liability under this indemnity provision.

In the event OWNER approves of LICENSEE'S defense of any Claim hereunder, OWNER shall cooperate fully with LICENSEE'S defense of such Claim at LICENSEE'S sole cost and expense. OWNER shall give notice to the LICENSEE within fifteen (15) business days after learning of such claim, demand or cause of action, but failure to do so in such time period shall only relieve the LICENSEE of its obligations to indemnify to the extent such delay actually prejudices the LICENSEE.

- 9.3. **NO WARRANTY BY OWNER.** OWNER gives no representation, warranty, or indemnity with respect to any liability or expense arising from any claim that use in any manner of the LICENSED PROPERTY in connection with the LICENSED ARTICLES hereunder infringes on any rights of any third party or otherwise constitutes unfair competition by reason of any prior rights acquired by such third party. LICENSEE agrees that LICENSEE has the responsibility to carry out any investigations that LICENSEE deems appropriate to establish that the Licensed Properties and Licensed Products do not infringe the rights of any third party, and OWNER will not be liable to LICENSEE if such infringement occurs. At OWNER's discretion, OWNER may apply to register any of the Licensed Properties in the Territory, but OWNER will have no obligation to file any such applications or to continue to prosecute such applications to completion.
10. **INSURANCE.** Unless a waiver of this provision is indicated on EXHIBIT 8, upon execution of this Agreement, LICENSEE shall have and maintain at its sole cost and expense throughout the TERM of this Agreement, post-termination or expiration Sell-off Period, and for three (3)

years thereafter, standard liability insurance from a recognized insurance company acceptable to OWNER. This insurance coverage shall provide general commercial liability insurance for each occurrence of: bodily injury, property damage, intellectual property liability, personal injury, product liability, contractual liability, advertising injury liability, infringement claims relating to trademark, trade dress, patent and copyright, and unfair competition claims in the amount set forth in EXHIBIT 8, and shall have no right of subrogation.

Such insurance coverage shall name OWNER as additional insured parties against any and all claims, demands, causes of action, or damages, including reasonable attorney's fees.

The stipulated limits of coverage above shall not be construed as a limitation of any potential liability of LICENSEE to OWNER or third parties, and failure to request evidence of this insurance shall in no way be construed as a waiver of LICENSEE's obligation to provide the insurance coverage specified.

Such insurance policy shall provide that it may not be canceled or amended in a manner which restricts the existing coverage without at least thirty (30) days prior written notice to OWNER.

Within thirty (30) days after this Agreement is fully executed, (and thereafter at least thirty (30) days prior to the expiration of insurance coverage), LICENSEE shall furnish to OWNER a Certificate of Insurance evidencing the foregoing coverage and specifically listing OWNER as an additional insured party.

11. **CONFIDENTIALITY.** During the TERM of this Agreement and for a period of three (3) years after this Agreement expires or is terminated for any reason, neither party, without prior written permission from the other party shall disclose, reveal, divulge, use or by whatever means make available, except as required to perform its obligations pursuant to this Agreement, the terms and conditions of this Agreement and information of the other party which was (a) denominated or marked as "confidential" at the time of disclosure; or (b) confirmed in writing as "confidential" within thirty (30) days from an oral disclosure obtained from the other party. Each party hereto may disclose confidential information from the other party to its affiliates subject to all the terms and conditions of this Section.

The obligations of confidentiality shall not apply to information which:

1. Is, or subsequently becomes, available to the public through no fault of the receiving party.
2. The receiving party can show was previously known to it at the time of disclosure.
3. Is subsequently obtained from a third party who has obtained the information through no fault of the receiving party.

4. Is independently developed as evidenced by the written records of the receiving party.
 5. Is disclosed to a third party by the disclosing party without a corresponding obligation of confidence.
 6. Is required to be disclosed by the receiving party pursuant to a requirement, order or directive of a government agency or by operation of law, including the Freedom of Information Act (5 U.S.C. § 552) subject to prior consultation with the disclosing party's legal counsel.
12. **NO RIGHT TO ASSIGN OR TO SUBLICENSE.** This Agreement and all rights and duties herein are personal to LICENSEE and are not assignable, in whole or in part, by LICENSEE without OWNER's prior written consent. The rights and duties hereunder may not be mortgaged or otherwise encumbered. Except as provided herein, any grant or attempted grant by LICENSEE of any assignment of part or all of this Agreement, a sublicense, a subcontract or any other act of LICENSEE which in any way attempts to encumber or transfer, or, in fact, encumbers or transfers any of LICENSEE's rights and obligations hereunder, or the sale or attempted sale of a controlling interest in the shares of LICENSEE constitutes a breach of this Agreement. Any change in the control of LICENSEE, either directly or indirectly, without notice to and the prior written consent of OWNER constitutes a breach of this Agreement. Any assignment or other change approved by OWNER shall make this Agreement fully binding upon and enforceable against any successors or assigns.

Notwithstanding the above, LICENSEE shall have the right to subcontract the manufacture of LICENSED ARTICLES to MANUFACTURERS and the distribution of LICENSED ARTICLES to DISTRIBUTORS so long as (a) LICENSEE has given prior written notice of such proposed subcontract arrangement to OWNER, including the name, address and such other information concerning the proposed MANUFACTURERS and/or DISTRIBUTORS as may be requested by OWNER; (b) OWNER has given LICENSEE its prior written approval of each proposed MANUFACTURER and/or DISTRIBUTOR; (c) each such MANUFACTURER and/or DISTRIBUTOR shall be otherwise subject to the inspection and quality control procedures set forth herein; (d) the LICENSED ARTICLES and/or any elements of any LICENSED ARTICLES made by such MANUFACTURER meet the quality standards set forth in this Agreement; and (e) each such MANUFACTURER executes the Manufacturer's Agreement attached hereto as SCHEDULE E (and a true and correct copy of each such Manufacturer's Agreement is provided to OWNER within two (2) business days after full-execution of such Manufacturer's Agreement). Each such MANUFACTURER and/or DISTRIBUTOR agrees to be bound by all of the terms and conditions of this Agreement, and LICENSEE agrees to guarantee all such MANUFACTURER'S and/or DISTRIBUTOR'S full performance of this Agreement.

13. **TERMINATION AND SELL-OFF**

13.1 TERMINATION. Without prejudice to any other rights, OWNER shall have the right to terminate this Agreement upon written notice to LICENSEE at any time:

1. If LICENSEE shall fail to make any payment (including any payment for artwork or other allowable expenses) due hereunder or to deliver any of the statements or documents herein referred to, and if such default shall continue for a period of five (5) business days after written notice of such default is sent by OWNER via certified mail to LICENSEE.
2. If LICENSEE shall discontinue its business, files, or has filed against it, a petition in bankruptcy, reorganization, or for the adoption of an arrangement under any present or future bankruptcy, reorganization, or similar law (which petition is not dismissed within ninety (90) days after the filing date), makes an assignment for the benefit of its creditors or is adjudicated bankrupt, or a receiver, trustee, liquidator, or sequestrator of all or substantially all of LICENSEE's property is appointed, or any secured creditor of LICENSEE exercises or purports to exercise any right or remedy as a secured creditor with respect to any collateral consisting, in whole or in part, of any of the LICENSED ARTICLES or any of the results, products, or proceeds thereof or otherwise that would hinder, impair, prevent, or delay LICENSEE's ability to timely and properly pay, perform, and discharge all of its obligations and liabilities to OWNER hereunder. In any such instance, all rights of LICENSEE hereunder shall automatically terminate forthwith without notice. This Section shall be applicable if LICENSEE or its directors, officers, shareholders, partners, managers, or other persons or entities having the right to do so shall take any action in contemplation of bankruptcy, reorganization, dissolution, or liquidation of LICENSEE or any other action referred to hereinabove. Notwithstanding any other term or provision of this Agreement, LICENSEE shall have no right to cure any of the foregoing defaults. In the event this license is so terminated, LICENSEE, its receivers, representatives, trustees, agents, administrators, successors, and/or assigns shall have no right to sell, exploit, or in any way deal with any of the LICENSED ARTICLES or any carton, container, packing, or wrapping material, advertising, promotional, or display material pertaining thereto, except with and under the special consent and instructions of OWNER, in writing, which they shall be obligated to follow.
3. Notwithstanding anything to the contrary set forth herein, if LICENSEE does not maintain MINIMUM NET SALES of LICENSED ARTICLES in each annual period as further set forth in EXHIBIT 7, OWNER shall have the right to terminate this Agreement by written notice delivered to LICENSEE within one hundred and twenty (120) days after the end of any annual period in which LICENSEE shall fail to maintain such required MINIMUM NET SALES.
4. If for any six (6) month period LICENSEE does not diligently and commercially distribute and sell all categories of LICENSED ARTICLES included in EXHIBIT 1 of this Agreement throughout each country in the LICENSED TERRITORY.
5. If OWNER or LICENSEE is ordered to withdraw, discontinue, remove, or recall any LICENSED ARTICLE from the DISTRIBUTION CHANNELS by a government or governmental agency, regulatory body, court, or the like.

6. If during any twelve (12) month period OWNER gives more than two (2) termination notices to LICENSEE pursuant to this Section, regardless of cure by LICENSEE.
7. If LICENSEE does not begin the bona fide manufacture, distribution, and sale of the LICENSED ARTICLES in the LICENSED TERRITORY on or before the Distribution Start Date as set forth in EXHIBIT 9.
8. If LICENSEE does not provide customer service with respect to the LICENSED ARTICLES at the standard required under Section 14.5 and such failure is not corrected within ten (10) business days after written notice by OWNER.
9. If LICENSEE fails to obtain or maintain product liability insurance in the amount and/or the type provided for under Section 10.
10. If LICENSEE uses the PROPERTY in an unauthorized manner, asserts rights in the PROPERTY without OWNER's prior written consent, or if LICENSEE fails to obtain OWNER's approval or exceeds OWNER's approval, or ignores OWNER's disapproval for any items created hereunder and promotes, markets, advertises, publicly uses, distributes and/or sells such items.
11. If LICENSEE or any MANUFACTURER fails in any respect to abide by the terms and conditions set forth in SCHEDULE D.
12. If LICENSEE fails in any respect to abide by the provisions set forth in Section 12 herein.
13. If LICENSEE does not fulfill its obligation to distribute, promote and advertise the LICENSED ARTICLES as set forth under Section 14.
14. If LICENSEE uses the PROPERTY in any manner which disparages, tarnishes, or dilutes the distinctive quality of the PROPERTY or the reputation and goodwill embodied in the PROPERTY, or which disparages, tarnishes, or otherwise adversely reflects on or effects the PROPERTY or OWNER, or any of OWNER's employees, products or services.
15. If LICENSEE fails to perform any other material term or condition of this AGREEMENT or otherwise materially breaches any provision herein and does not cure such failure within twenty (20) business days after written notice from OWNER.

Termination of the license under the provisions of this Section shall be without prejudice to any rights which OWNER may otherwise have against LICENSEE. Upon the termination of the license granted herein, notwithstanding anything to the contrary herein, all ROYALTY PAYMENTS on sales theretofore made shall become immediately due and payable, no MINIMUM ROYALTIES shall be repayable, and balances owing on all MINIMUM ROYALTIES for the TERM shall be immediately due and payable. Notwithstanding any termination or expiration of this Agreement, OWNER shall have and hereby reserves all rights and remedies which it has or which are granted to it by operation of law, to enjoin the unlawful or unauthorized use of the PROPERTY or the LICENSED ARTICLES.

13.2. SELL-OFF PERIOD. After expiration or termination of the license under this Agreement, LICENSEE shall have no further right to manufacture, advertise, distribute, sell, or otherwise deal in any LICENSED ARTICLES which utilize the PROPERTY, except as hereinafter provided.

1. LICENSEE shall prepare a fully written inventory list and submit same to OWNER within ten (10) days of the expiration or termination of the license under this Agreement. Such list shall include orders on hand, work in process, as well as finished LICENSED ARTICLES.
2. OWNER shall have twenty (20) days thereafter to decide whether to purchase any or all inventory at the lowest wholesale cost or fair market value. If OWNER exercises such right of purchase, LICENSEE shall deliver the inventory referred to in OWNER's notice within ten (10) days after OWNER's said notice with the exception of inventory necessary to fulfill orders on hand. OWNER shall pay LICENSEE for such delivered inventory that is in marketable condition within twenty (20) days after its receipt thereof.
3. Upon said expiration or termination, and if OWNER does not elect to purchase the inventory, unless the expiration or termination shall occur as a result of a violation of Sections 3, 5, 11 or 13 hereof, LICENSEE, on a non-exclusive basis, may sell LICENSED ARTICLES which are on hand or in process at the time of such expiration or termination, for a period of ninety (90) days therefrom, provided that: (a) all payments with respect to that ninety (90) day period are made in accordance with Section 3 hereof; and (b) none of such payments shall be credited towards MINIMUM ROYALTIES.

14. DISTRIBUTION REQUIREMENTS, PROMOTION COMMITMENT, ADVERTISING, PRESS RELEASES AND CUSTOMER SERVICE.

14.1. DISTRIBUTION REQUIREMENTS. LICENSEE agrees to use its best efforts to sell, distribute, and supply the LICENSED ARTICLES within the LICENSED TERRITORY. LICENSEE shall begin the bona fide manufacture, distribution, and sale of the LICENSED ARTICLES in each country in the LICENSED TERRITORY on or before the Distribution Start Date specified in EXHIBIT 9. LICENSEE shall make and maintain reasonable arrangements for the broadest possible distribution of LICENSED ARTICLES throughout such LICENSED TERRITORY

through all regular and permitted DISTRIBUTION CHANNELS (as set forth in EXHIBIT 9). LICENSEE agrees to maintain adequate inventories of the LICENSED ARTICLES as an essential part of its distribution program. In the event OWNER advises LICENSEE that a special promotional effort is to take place in one individual store or chain, LICENSEE agrees to make arrangements for the supply of LICENSED ARTICLES to said store or chain in such quantities as may be required for such effort.

- 14.2. **PROMOTION COMMITMENT.** LICENSEE shall expend for the PROMOTION COMMITMENT of the LICENSED ARTICLES during each annual period during the TERM of this Agreement the amount set forth in EXHIBIT 10 hereto. Such advertisements and promotions shall comply with the requirements set forth in Section 14.3. LICENSEE shall account in writing to OWNER for all expenditures made hereunder for purposes hereof. Permitted expenditures on advertising shall be limited to the cost of space and time in any media as well as direct production costs related thereto. Direct out-of-pocket expenditures relating to public relations or in-store seminars, promotions, displays or exhibits may also constitute expenditures permitted for the PROMOTION COMMITMENT.

- 14.3. **ADVERTISING.** LICENSEE shall not advertise in any publication or communications medium which could damage the goodwill of the PROPERTY or the OWNER's reputation in any way. Specifically, LICENSED ARTICLES shall not be placed or displayed in any illegal, vulgar, obscene, immoral, unsavory or offensive manner or in any potentially controversial publication or other controversial media or setting whatsoever.

LICENSEE shall submit to OWNER for authorization and approval in advance all plans and materials relating to print, radio, television, computer network, and cinema advertising and promotional activities relating to the LICENSED ARTICLES and/or PROPERTY. All such submissions shall be governed by the procedures set forth in Section 5 above. OWNER, in its sole discretion, may approve or reject any such advertising or promotional activity, including, but not limited to, the discretion to prohibit LICENSEE from advertising the LICENSED ARTICLES and/or PROPERTY by means of television and/or billboards. LICENSEE shall obtain, at its sole cost and expense, all third party consents and approvals necessary in connection with advertising and promotional activities that OWNER does authorize. OWNER's approval of copy or storyboards for such advertising will not constitute or imply a representation of belief by OWNER that such copy or storyboards comply with any applicable laws or regulations. LICENSEE shall not have any rights against OWNER for damages or any other remedy by reason of OWNER's failure or refusal to grant approval of any advertising.

- 14.4. **PRESS RELEASES.** All press releases and/or public announcements by LICENSEE with respect to the subject matter of this AGREEMENT or the Marine Corps shall be subject to prior written approval by OWNER as to content, timing and distribution of any such release. LICENSEE shall not have any rights against OWNER for damages or other remedy by reason of OWNER's failure or refusal to grant approval of any press release.

- 14.5. **CUSTOMER SERVICE.** LICENSEE recognizes and acknowledges the reputation that OWNER has for providing a high level of service to

the citizens of the United States of America. LICENSEE agrees that it shall make every reasonable effort to provide the same high level of service to its customers including the handling of all customer returns, inquiries, and complaints in a timely and appropriate fashion. Any returns, inquiries, or complaints concerning the LICENSED ARTICLES that are referred to OWNER will be forwarded promptly to the LICENSEE for handling. LICENSEE shall exercise its best efforts promptly to resolve any consumer complaints regarding the quality or performance of any LICENSED ARTICLE, and shall periodically report such complaints and their resolution to OWNER. LICENSEE shall notify OWNER immediately of any complaints regarding the LICENSED ARTICLES that involve bodily injury or death or serious property damage and shall cooperate with OWNER in the resolution of such complaints. OWNER reserves the right to participate in the resolution of all complaints, but the exercise of such right shall not relieve LICENSEE of its indemnification obligations under Section 9 herein.

15. NOTICES.

- 15.1. NOTICE.** All notices and statements to be given hereunder shall be in writing and shall be given or made at the respective address of the parties as set forth below unless notification of a change of address is given in writing. Any notice shall be sent by certified mail, and shall be deemed to have been given at the time it is mailed.

If to OWNER: Headquarters United States Marine Corps
Public Affairs (PA)
Trademark Licensing Office
Room 4B548
Marine Corps Pentagon
Washington D.C. 20350-3000

3000

If to LICENSEE: Johnny & Mike Drink LLC
731 Market Street 6th Floor
San Francisco, CA, 94103

- 15.1. NOTICE OF MANDATED RECALL OF LICENSED ARTICLES.** LICENSEE shall immediately notify OWNER in writing upon receipt of any notice received by LICENSEE, or any MANUFACTURER, ordering the withdrawal, discontinuance, removal, or recall of any LICENSED ARTICLES by a government or governmental agency, a regulatory body, court or the like.
- 16. FORCE MAJEURE.** Neither party shall be liable for a failure to perform any of its obligations hereunder (other than LICENSEE's use of PROPERTY, quality control and approval obligations hereunder) when such failure is caused by or results from (i) strike, blacklisting, boycott

or sanctions however incurred; (ii) acts of God, public enemies, authority of law, embargo, quarantine, riot, insurrection or war; (iii) inability to obtain raw materials; or (iv) any other cause beyond their respective control.

In the event either party is unable to perform its obligations as a consequence of any of the contingencies set forth in this Section for a period of six (6) months or more, either party hereto may terminate this Agreement, which termination shall relieve each party of any liability to the other based upon such termination; however, LICENSEE shall not be released from any of its obligations to make ROYALTY PAYMENTS (including MINIMUM ROYALTIES) or any other payments to OWNER pursuant to the terms and conditions of this Agreement.

17. **ENTIRE AGREEMENT.** This Agreement as executed by the parties hereto, including Exhibits and Schedules attached hereto, all of which are incorporated by reference, together constitutes the complete and exclusive agreement and understanding between the parties hereto and terminates and supersedes any prior agreement or understanding relating to the subject matter hereof between OWNER and LICENSEE. None of the provisions of this Agreement can be waived or modified except in writing signed by both parties, and there are no representations, discussions, proposals, promises, agreements, warranties, covenants or undertakings, whether oral or written, other than those contained herein. Neither the tender of this Agreement by OWNER to LICENSEE nor the deposit by OWNER of LICENSEE's ADVANCE PAYMENT, if required, shall be binding, provided in the latter case that repayment is made in a commercially prompt and reasonable manner. Only upon delivery to LICENSEE of a fully-executed agreement shall this Agreement be binding.
18. **NO JOINT VENTURE.** Nothing herein contained shall be construed to place the parties in the relationship of partners or joint venturers or agents, and LICENSEE shall have no power to obligate or bind OWNER in any manner whatsoever. Nothing herein shall in any way be construed as constituting LICENSEE as a partner, agent or subsidiary of OWNER, and vice-versa and the parties shall at all times be and remain independent contractors.
19. **DISPUTES.** All disputes concerning the interpretation of this Agreement shall be discussed mutually between the parties. Any disputes that are not disposed of by mutual agreement shall be referred to the signatories of this Agreement for joint resolution. If the signatories are unable to resolve the dispute, the Director of Public Affairs shall issue a written decision, which shall be a final Agency decision for all purposes, including judicial review.
20. **SURVIVAL.** Upon any expiration or termination of this Agreement, neither party shall have any obligations to the other except as set forth in Sections 2.1, 2.4, 3, 4, 6.3, 8, 9, 10, 11, 12, 13, 15 and 20 hereof which shall survive the termination of this Agreement, as well as the provisions of this Agreement which by their terms or by implication are to have continuing effect after the termination or expiration of this Agreement.

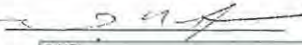
21. **APPLICABLE LAW AND JURISDICTION.** The terms and provisions of this Agreement shall be interpreted in accordance with and shall be governed by the laws of the United States of America. Any suit by LICENSEE against OWNER for the recovery of damages or other relief must be brought in the U.S. Court of Federal Claims.
22. **MISCELLANEOUS.** The provisions of this Agreement are severable, and if any clause or provision shall be held invalid or unenforceable, in whole or in part, the remaining terms and provisions shall be unimpaired and the unenforceable term or provision shall be replaced by such enforceable term or provision as comes closest to the intention underlying the unenforceable term or provision. This Agreement is the product of arms-length negotiations between parties knowledgeable of its subject matter who have had the opportunity to consult counsel concerning the terms and conditions of this Agreement prior to the execution hereof. Any rule of law that would require interpretation of any provision against the party responsible for its inclusion herein shall have no effect on the interpretation of this Agreement. Each party agrees that, in its respective dealings with the other party under or in connection with this Agreement, it shall act in good faith and fair dealing. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A facsimile copy of an executed counterpart shall be valid and have the same force and effect as an original.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the latest execution date shown below.

LICENSEE

OWNER

United States Marine Corps

BY: 
NAME: (b)(6)
TITLE: Founder / President
3/19/10

BY: (b)(6)
NAME: (b)(6)
TITLE: Program Manager
22 April 2010

TABLE OF EXHIBITS

EXHIBIT 1 (SECTION 1.1: LICENSED ARTICLES)

16 oz energy beverage, RE-UP

RE-UP cans will list the total caloric content per can on the label

RE-UP cans will list on the can the total stimulant content per can (caffeine from kola nut as well as guarana seed extract).

RE-UP will market only 16 oz cans (no 24oz or 36oz cans)

In place of the "Officially Licensed, Endorsed by the USMC" clause on the can, replace with, "The Eagle, Globe and Anchor is a trademark of the USMC, used with permission".

RE-UP cans will display the following language "Not recommended to mix with alcohol"

RE-UP cans will display the following language "Not recommended for children, pregnant women, or people sensitive to caffeine"

EXHIBIT 2 (SECTION 1.3: LICENSED TERRITORY)

(b)(4)

EXHIBIT 3 (SECTION 2.2: TERM)

(b)(4)

EXHIBIT 4 (SECTION 3.1: ROYALTY RATE)

(b)(4)

HOLDING ACCOUNT

Upon completion of Final License Agreement, LICENSEE shall set up a holding account, into which royalty and advance payments shall be deposited by LICENSEE until such time that OWNER is able to accept such payments. At such time, LICENSEE shall render such payments to OWNER within (10) days of receiving written notice.

EXHIBIT 5 (SECTION 3.2: ADVANCE PAYMENT)

None for initial test market

EXHIBIT 6 (SECTION 3.3: MINIMUM ROYALTY)

None for initial test market

EXHIBIT 7 (SECTION 3.4: MINIMUM NET SALES)

None for initial test market

EXHIBIT 8 (SECTION 10: INSURANCE)

(b)(4)

**EXHIBIT 9 (SECTION 14.1: DISTRIBUTION REQUIREMENTS)
DISTRIBUTION CHANNELS:**

(b)(4)

Distribution Start Date:

(b)(4)

EXHIBIT 10 (SECTION 14.2: PROMOTION COMMITMENT)

None for initial test market

SCHEDULE A

PROPERTY

U. S. Marine Corps name and initials (USMC)

USMC Eagle Globe & Anchor/USMC Emblem
Style sheet information available upon request



Marine Corps Coat of Arms
Call for Style specifications



SCHEDULE B

ROYALTY REPORT FORM

Report For: Quarter, Year

SKU #	Description	Price/ Unit	Units Sold	Total Sales	Less Returns	Less Allowances	Net Sales

Total Net Sales
x Royalty Rate _____ %
Royalties Due
Less Advances ()
Total Royalties Due \$

Signature of Authorized
Officer Certifying foregoing
to be accurate

Name:
Title:
Date:

SCHEDULE C

ARTWORK ASSIGNMENT AGREEMENT

IN CONSIDERATION OF One Dollar (\$1.00) and other good and valuable consideration paid or to be paid to Carey Color Incorporated (the "Contractor") by Patriot Beverage Company ("Company"), the parties hereto agree as follows:

- (a) Contractor represents and warrants that Contractor will create all Marine Corps Emblem and/or Marine Corps Eagle Globe and Anchor to be submitted by Contractor to the Company, in connection with PROPERTY of The United States Marine Corps known as Marine Corps Emblem and/or Marine Corps Eagle Globe and Anchor. (All such materials created by Contractor and all drafts, outlines, and other preparatory materials shall collectively be called the "Work" herein). Contractor warrants and represents that the Work shall be original with Contractor and shall not infringe the rights of any third parties; and that United States Marine Corps has the exclusive right forever and throughout the universe to exploit the Work and the results and proceeds of Contractor's services rendered in connection therewith.
- (b) The Work is and shall be considered a work made for hire for The United States Marine Corps and The United States Marine Corps owns and shall own all right, title and interest in and to the Work and the results and proceeds of Contractor's services rendered in connection therewith, including, without limitation, all copyrights and renewals and extensions of copyright therein.
- (c) To the extent that any such ownership in such Work does not vest in The United States Marine Corps by reason of Contractor's status as an employee for hire: Contractor hereby assigns and transfers in whole to The United States Marine Corps, all right, title, and interest in and to such Work and the results and proceeds thereof to the extent that Contractor has, had, or will have any interest therein, including without limitation, all copyrights and renewals and extensions of copyright therein.
- (d) The Work may be registered for copyright in the name of The United States Marine Corps, and Patriot Beverage Company shall own and possess all physical material in which or on which the Work is embodied or reproduced, by or on behalf of Contractor. The United States Marine Corps shall have the exclusive right forever throughout the universe to change, adapt, modify, use, copy, distribute, display, combine with other material, and otherwise exploit the Work in all media and by all means, whether now known or hereafter invented or developed. Contractor hereby waives any and all claims that Contractor may have now or may hereafter have in any jurisdiction to so-called "moral rights" or "droit moral" with respect to the Work, and to the results and proceeds thereof.
- (e) Any further compensation paid or to be paid to Contractor for services rendered in connection with the Work shall be described in a separate writing or writings. This Agreement shall constitute the entire understanding between the parties. This Agreement may not be altered, modified or changed in any way without the express written consent of both parties and shall be construed in accordance with the laws of the State of California applicable to agreements executed and wholly performed therein.

- (f) When requested by Company, or The United States Marine Corps, Contractor shall perform all such acts and things and sign all documents and certificates which the Company or The United States Marine Corps may reasonably request in order to carry out the intent and purpose of this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement.

COMPANY:

(b)(6)

Michael N. Spearman

BY: Michael N. Spearman

ITS: President

DATE: 03/23/10 _____

[to be notarized]

CONTRACTOR:

(b)(6)

BY: *Russell T. Kotalec*

ITS: *EXEC. U.P. / CFO*

DATE: *3/24/10*

(b)(6)

NATALIE SCHMIDT, NOTARY
STATE OF OHIO
MY COMMISSION EXPIRES: 8/03/2013

SCHEDULE E

MANUFACTURER'S AGREEMENT

This Manufacturer's Agreement is made by and between Patriot Beverage Company ("Licensee") and Krier Foods Incorporated ("Manufacturer") located at 520 Wolf Road, Random Lake, WI 53075.

WHEREAS, Licensee has entered into a License Agreement with the United States Marine Corps ("Owner") effective March 15, 2010 for the manufacture, distribution and sale of certain products bearing certain trademarks of Owner that are identified on the attached Schedule A ("Property");

WHEREAS, Licensee desires Manufacturer to manufacture or supply materials for the manufacture of certain products bearing the Property ("Licensed Articles"), which are subject to such Agreement;

WHEREAS, pursuant to said License Agreement, all suppliers and manufacturers utilized by Licensee in the manufacture of Licensed Articles must agree to certain conditions;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Manufacturer agrees as follows:

1. Manufacturer acknowledges that all elements of the Property are the sole property of Owner and that Manufacturer's right to manufacture the Licensed Articles with the Property thereon is in all respects subject to the terms and conditions of the License Agreement. All manufacturing rights to the Licensed Articles are subject to the restrictions on the use of the Property and the termination provisions of the License Agreement. The manufacture of the Licensed Articles shall give Manufacturer no right to use the Property or to sell Licensed Articles bearing the Property beyond the term of the License Agreement. Manufacturer agrees that all uses of the Property hereunder inures solely and exclusively to the benefit of Owner and that only Owner shall have the right to apply for and obtain any intellectual property registration in the Property. Manufacturer shall not register or attempt to register any of the Property, or any name, logo, design or symbol confusingly similar thereto, in any country, or aid or abet anyone else in doing so. If Owner terminates the License Agreement, Manufacturer shall have no claim against Owner for any reason whatsoever.
2. Manufacturer shall not sell the Licensed Articles to any person or entity except Licensee. Manufacturer shall look solely to Licensee (and not to Owner) for all payments in connection with or relating to this Manufacturer's Agreement.
3. Manufacturer will conform to all local laws and customs regarding hiring practices, wage and working conditions. Manufacturer will comply with all of the provisions of Schedule D, of the Agreement, *Standards of Manufacturing Practices*, (a copy of which shall be provided to Manufacturer by Licensee upon signing hereof), including, without limitation, Owner's right to inspect Manufacturer's facilities. Under no circumstances will Manufacturer involve the production of Licensed Articles in an environment where underage labor is employed. Manufacturer will not utilize factories or production facilities that force work to be performed by unpaid laborers or those who must otherwise work against their will. Licensee will monitor Manufacturer's factories and work environment to ensure compliance with these policies and obtain verification of compliance. If Manufacturer is found not to be in compliance with the above requirements, it will no longer be permitted to be a manufacturer of Licensed Articles.

4. Owner shall be deemed an intended third party beneficiary of this Manufacturer's Agreement and shall have the right, in its sole discretion, to enforce its provisions against Manufacturer.
5. A copy of this Manufacturer's Agreement shall be provided to Owner by Licensee.

MANUFACTURER

(b)(6)
By: _____
Signature

Steven P. Ihroke

Printed Name

Director of Purchasing & Contract Packaging

Title

3/31/10

Date

LICENSEE

(b)(6)
By: _____
Signature

Michael N. Spearman

Printed Name

Founder

Title

03-23-10

Date

SCHEDULE D

Standards of Manufacturing Practices

Overview

In order to maintain high standards for decent and humane working conditions in the manufacturing operations of LICENSEES, OWNER has established specific guidelines for its LICENSEES and their MANUFACTURERS around the world. LICENSEE and all MANUFACTURERS shall operate in compliance with local laws and, in addition, meet the specific *Standards of Manufacturing Practices* set forth below through a monitored certification process.

OWNER believes that the following set of standards will ensure that decent and humane working conditions are provided to the employees of the factories with which LICENSEE operates and/or contracts. Where a factory is found to be in violation of the *Standards by OWNER or LICENSEE*, corrective action will be initiated and unless the violation is corrected, OWNER may require the LICENSEE to correct its own deficiencies and/or to require the LICENSEE to cease to do business with the offending factory. OWNER believes that consumers can have confidence that products manufactured in compliance with these standards are not produced under exploitative or inhumane conditions.

Standards of Practice

Forced Labor

LICENSEE and its MANUFACTURERS certify that they do not use any forced labor - prison, indentured, bonded or otherwise.

Child Labor

LICENSEE and its MANUFACTURERS certify that no person shall be employed in any factory at an age younger than 15 (or 14 where the law of the country of manufacture allows) or younger than the age for completing compulsory education in the country of manufacture where such age is higher than 15.

Harassment or Abuse

LICENSEE and its MANUFACTURERS certify that every employee shall be treated with respect and dignity. No employee shall be subject to any physical, sexual, psychological or verbal harassment or abuse.

Nondiscrimination

LICENSEE and its MANUFACTURERS certify that no person shall be subject to any discrimination in employment, including hiring, salary, benefits, advancement, discipline, termination or retirement, on the basis of race, religion, gender, age, disability, sexual orientation, nationality, political opinion, or social or ethnic origin.

Health and Safety

LICENSEE and its MANUFACTURERS certify that workers will be provided a safe and healthy working environment to prevent accidents and injury to health arising out of, linked with, or occurring in the course of work or as a result of the operation of MANUFACTURERS' facilities.

Freedom of Association and Collective Bargaining

LICENSEE and its MANUFACTURERS certify that their employees' rights to freedom of association and collective bargaining will be recognized and respected.

Wages and Benefits

LICENSEE and its MANUFACTURERS certify that employees will be paid at least the minimum wage required by local law, or the prevailing industry wage, whichever is higher.

Hours of Work/Overtime

LICENSEE and its MANUFACTURERS certify that they comply with regulations concerning work hours mandated by local laws and uses overtime only when employees are compensated according to local law. LICENSEE and its MANUFACTURERS further certify that they will not allow employees to exceed the maximum number of overtime hours provided by local law.

Benefits

LICENSEE and its MANUFACTURERS certify that they comply with all provisions for legally-mandated benefits, including but not limited to health care; child care; sick leave; contributions for social security; life, health, worker's compensation and other insurance mandated by local law.

Environment

LICENSEE and its MANUFACTURERS certify that they comply with applicable country environmental regulations.

Documentation and Inspection

LICENSEE and its MANUFACTURERS agree to:

(A) Certify to OWNER on an annual basis in writing that each of the above-listed *Standards* is being met.

~~(B) Consent to and permit two (2) inspections of each factory by OWNER's or LICENSEE's representatives each year, provided OWNER gives LICENSEE and MANUFACTURER 48 hours prior notification for each inspection.~~

~~(C) Maintain on file such documentation as may be needed to demonstrate compliance with OWNER's *Standards of Manufacturing Practices*.~~

~~(D) Make these documents available in the English language to OWNER or LICENSEE for audit inspection upon request.~~

(E) Provide employees with the opportunity to report noncompliance with workplace standards outlined herein, free from punishment or prejudice for so doing.

(F) Post the *Standards* in the language of the country of manufacture in a common area accessible by all employees.

SCHEDULE E

MANUFACTURER'S AGREEMENT

(b)(6) This Manufacturer's Agreement is made by and between Patriot Beverage Company ("Licensee") and Ball Corporation Metal Beverage Container Corp. ("Manufacturer") located at 9300 West 108th Circle, Broomfield, CO 80021-3682.

WHEREAS, Licensee has entered into a License Agreement with the United States Marine Corps ("Owner"), effective March 15, 2010 for the manufacture, distribution and sale of certain products bearing certain trademarks of Owner that are identified on the attached Schedule A ("Property");

WHEREAS, Licensee desires Manufacturer to manufacture or supply materials for the manufacture of certain products bearing the Property ("Licensed Articles"), which are subject to such Agreement;

WHEREAS, pursuant to said License Agreement, all suppliers and manufacturers utilized by Licensee in the manufacture of Licensed Articles must agree to certain conditions;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Manufacturer agrees as follows:

1. Manufacturer acknowledges that all elements of the Property are the sole property of Owner and that Manufacturer's right to manufacture the Licensed Articles with the Property thereon is in all respects subject to the terms and conditions of the License Agreement. All manufacturing rights to the Licensed Articles are subject to the restrictions on the use of the Property and the termination provisions of the License Agreement. The manufacture of the Licensed Articles shall give Manufacturer no right to use the Property or to sell Licensed Articles bearing the Property beyond the term of the License Agreement. Manufacturer agrees that all uses of the Property hereunder inures solely and exclusively to the benefit of Owner and that only Owner shall have the right to apply for and obtain any intellectual property registration in the Property. Manufacturer shall not register or attempt to register any of the Property, or any name, logo, design or symbol confusingly similar thereto, in any country, or aid or abet anyone else in doing so. If Owner terminates the License Agreement, Manufacturer shall have no claim against Owner for any reason whatsoever.
2. Manufacturer shall not sell the Licensed Articles to any person or entity except Licensee. Manufacturer shall look solely to Licensee (and not to Owner) for all payments in connection with or relating to this Manufacturer's Agreement.
3. Manufacturer will conform to all local laws and customs regarding hiring practices, wage and working conditions. Manufacturer will comply with all of the provisions of Schedule D, of the Agreement, *Standards of Manufacturing Practices*, (a copy of which shall be provided to Manufacturer by Licensee upon signing hereof), including, without limitation, Owner's right to inspect Manufacturer's facilities. Under no circumstances will Manufacturer involve the production of Licensed Articles in an environment where underage labor is employed. Manufacturer will not utilize factories or production facilities that force work to be performed by unpaid laborers or those who must otherwise work against their will. Licensee will monitor Manufacturer's factories and work environment to ensure compliance with these policies and obtain verification of compliance. If Manufacturer is found not to be in

Licensed Articles.

4. Owner shall be deemed an intended third party beneficiary of this Manufacturer's Agreement and shall have the right, in its sole discretion, to enforce its provisions against Manufacturer.
5. A copy of this Manufacturer's Agreement shall be provided to Owner by Licensee.

MANUFACTURER .


By: (b)(6)
Signature
John L. Neumeister
Printed Name
Vice President - CSD Sales
Title
April 21, 2010
Date

LICENSEE

By: (b)(6)
Signature
Michael N. Spearman
Printed Name
Founder
Title
03-23-10
Date


APPROVED

ENERGY SUPPLEMENT




REUP™
ENERGY

16 FL. OZ. / 473 ML



MADE IN U.S.A.

ENERGY SUPPLEMENT



REUP™
ENERGY

16 FL. OZ. / 473 ML

REUP™

The Eagle, Globe and Anchor is a trademark of the United States Marine Corps, used with permission.

PARTIAL PROCEEDS WILL BE DONATED TO THE

Injured Marine
Semper Parati Fund

Joining This Will Preserve Our Freedom

REUPENERGY.COM



8 98934 00200 5

SUPPLEMENT FACTS
Serving Size 8 fl. oz. (240ml)
Servings Per Container: 2

	Amount Per Serving	% Daily Value
Calories	100	
Total Carbohydrate	25 g	8%
Sugars	25 g	1
Thiamin (as Thiamin Hydrochloride)	8 mg	500%
Riboflavin	2 mg	100%
Vitamin B3 - Niacin (as Nicotinamide)	20 mg	100%
Vitamin B6 (as Pyridoxine Hydrochloride)	2 mg	100%
Folate (as Folic Acid)	400 mcg	100%
Vitamin B12 (as Cyanocobalamin)	30 mcg	500%
Pantothenic Acid (as D-Calcium Pantothenate)	10 mg	100%
Potassium (as Potassium Citrate)	300mg	9%
Energy Blend:	1150 mg	1
<small>(Guarana, Caffeine (from kola nut), Inositol, D-Glucuronolactone, Guarana Sweet Extract)</small>		

*Percent Daily Values are based on a diet of other people's secrets. 1 Daily Value not established.

INGREDIENTS: PURIFIED CARBONATED WATER, PURE CANE SUGAR, NATURAL AND ARTIFICIAL FLAVOR (WITH CARAMEL COLOR), CITRIC ACID, MALTODEXTRIN, POTASSIUM BENZOATE TO PRESERVE FRESHNESS.

MANUFACTURED FOR PATRIOT BEVERAGE COMPANY, SAN FRANCISCO, CA 94103 USA

CAFFEINE & GUARANA SEED EXTRACT CONTENT:
57mg / 8 fl. oz. • 174mg / 16 fl. oz.
CALORIE CONTENT:
100 / 8 fl. oz. • 200 / 16 fl. oz.

NOT RECOMMENDED FOR CHILDREN, PREGNANT WOMEN OR PEOPLE SENSITIVE TO CAFFEINE

THESE STATEMENTS HAVE NOT BEEN EVALUATED BY THE FOOD AND DRUG ADMINISTRATION. THIS PRODUCT IS NOT INTENDED TO DIAGNOSE, TREAT, CURE OR PREVENT ANY DISEASE.

NOT RECOMMENDED TO MIX WITH ALCOHOL

SLANTED

THE FOLLOWING ILLUSTRATION INDICATES COLOR BREAK ONLY AND IS NOT REPRESENTATIVE OF ACTUAL PRODUCTION COLORS

2018 2022

VENDOR INFORMATION

JOB DESIGN RE-UP Energy Drinks

CUSTOMER PATRIOT BEVERAGE CO.
JOB NUMBER 53527 R4
CAN CODE JID A - MARINES
DATE 04-20-10

COLORS

BLACK
WHITE
RED
DK GRN
MED GRN
LT GRN

PMS NUMBERS

BLK
WHT
1807
3743
3763
3783

Substrate Color



Metal Beverage
Container Operations
Graphics Services

COMMENTS

ARTWORK

ENERGY SUPPLEMENT



RE-UP™
ENERGY
ZERO CARB / SUGAR FREE

The Eagle, Globe and Anchor is a trademark of the United States Marine Corps, used with permission.

PARTIAL PROCEEDS WILL BE DONATED TO THE
Injured Marine
Semper Paratus Fund
Doing What We Promise Our Product

REUPENERGY.COM



16 FL. OZ. / 473 ML

ENERGY SUPPLEMENT



RE-UP™
ENERGY
ZERO CARB / SUGAR FREE

16 FL. OZ. / 473 ML

SUPPLEMENT FACTS
Serving Size 8 fl. oz. (240ml)
Servings Per Container: 2

	Amount Per Serving	% Daily Value
Calories	0	
Total Carbohydrate	0 g	0%
Sugars	0 g	0%
Thiamin (as Thiamin Hydrochloride)	8 mg	500%
Riboflavin	2 mg	100%
Vitamin B3 - Nicotin (as Nicotinamide)	20 mg	100%
Vitamin B6 (as Pyridoxine Hydrochloride)	2 mg	100%
Folate (as Folic Acid)	400 mcg	100%
Vitamin B12 (as Cyanocobalamin)	30 mcg	500%
Pantothenic Acid (as D-Calcium Pantothenate)	10 mg	100%
Potassium (as Potassium Citrate)	300mg	9%
Energy Blend:	1150 mg	†
<small>(Theanine, Caffeine (from kola nut), Inositol, D-Glucuronolactone, Guarana Seed Extract)</small>		

†Percent Daily Values are based on a diet of 2000 calories a day. Daily Values are not established.

INGREDIENTS: PURIFIED CARBONATED WATER, NATURAL AND ARTIFICIAL FLAVOR (WITH CARAMEL COLOR), CITRIC ACID, MALTODEXTRIN, SUCRALOSE, POTASSIUM BENZOATE TO PRESERVE FRESHNESS.

MANUFACTURED FOR PATRIOT BEVERAGE COMPANY, SAN FRANCISCO, CA 94103, USA

CAFFEINE & GUARANA SEED EXTRACT CONTENT:
17mg / 8 fl. oz. + 174mg / 16 fl. oz.
CALORIE CONTENT:
0 / 8 fl. oz. + 0 / 16 fl. oz.

NOT RECOMMENDED FOR CHILDREN, PREGNANT WOMEN OR PEOPLE SENSITIVE TO CAFFEINE

THESE STATEMENTS HAVE NOT BEEN EVALUATED BY THE FOOD AND DRUG ADMINISTRATION. THIS PRODUCT IS NOT INTENDED TO DIAGNOSE, TREAT, CURE OR PREVENT ANY DISEASE.

NOT RECOMMENDED TO MIX WITH ALCOHOL

SLANTED

THE FOLLOWING ILLUSTRATION INDICATES COLOR BREAK ONLY AND IS NOT REPRESENTATIVE OF ACTUAL PRODUCTION COLORS

VENDOR INFORMATION

JOB DESIGN RE-UP Energy Drinks

CUSTOMER PATRIOT BEVERAGE CO.
JOB NUMBER 53527 R4
CAN CODE JID B - MARINES-SugarFree
DATE 04-21-10

COLORS

BLACK
WHITE
RED
DK GRN
MED GRN
LT GRN

PMS NUMBERS

BLK
WHT
1807
5743
5753
5753



Metal Beverage
Container Operations
Graphics Services

COMMENTS

Substrate Color